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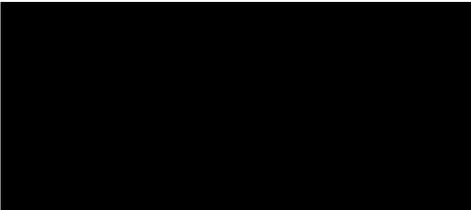
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FILE: WAC 02 206 54592 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Jensen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a healthcare services supervisor. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a healthcare services supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the [REDACTED] accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: promoting an organizational focus by establishing goals consistent with the focus; facilitating interdepartmental problem solving; functioning as a leader, participating in performance improvement activities and training; assuring that the facility maintains a patient focus; ensuring legal compliance; supervising medical activities; handling fiscal matters; participating in strategic planning; and coordinating staff schedules. The petitioner's position announcement and the certification from its president stated that a candidate must possess a bachelor's degree or its equivalent.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a head nurse or nurse supervisor, and that nursing is not considered a specialty occupation since a bachelor's degree is not a normal minimum or industry-wide requirement for entry into the occupation. The director also stated that if person is employed as a supervisor or manager and is responsible for supervising employees who are working in specialty occupations, the person is generally considered as occupying a specialty occupation. Conversely, a supervisor or manager does not occupy a specialty occupation if the person supervises employees who are not members of a specialty occupation. The director further stated that the beneficiary will supervise the activities of nurses and that is occupation is generally not considered a specialty occupation; for this reason, the proffered position is not a specialty occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation, and counsel submits a [REDACTED] from the petitioner. This letter states that the proffered position entails complex and highly specialized duties and responsibilities and that the position requires knowledge of medical theories and practices, accounting skills, and leadership. According to the letter, the degree requirement is established through the petitioner's job announcement, company letter, competitor certifications, and Internet postings. The letter states that the director erroneously classified the position as a head nurse or nurse supervisor because the beneficiary will not direct and deliver nursing duties. Instead, the petitioner contends that the beneficiary's duties involve policy, program, and administrative matters and the petitioner compares the proffered position to a medical and health services manager. The petitioner asserts that the director erred by stating that a head nurse or nurse supervisor position is not a specialty occupation, and states that the Rural and [REDACTED] has allowed the admission of nonimmigrant nurses under the H-1B classification. The petitioner claims that the healthcare industry requires a bachelor's degree for the proffered position. Finally, according to the petitioner, the beneficiary will supervise doctors who are considered as occupying specialty occupations.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals."

The petitioner claims that it satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to the petitioner, the beneficiary's duties are similar to those of a medical and health services manager because they involve policy, program, and administrative responsibilities. The petitioner furthermore states that the beneficiary will supervise doctors. The petitioner asserts that a head nurse or nurse supervisor position may be a specialty occupation, and states that the [REDACTED] classified nonimmigrant nurses under the H-1B classification.

The petitioner's claims are not without merit. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

After a careful review of the job description and the *Handbook*, the AAO finds that the duties of the position are performed by a head nurse or nurse supervisor as concluded by the director. The AAO also finds that the petitioner failed to establish that the duties are similar to those performed by a medical and health services manager. The *Handbook* states the following about head nurses or nurse supervisors:

Head nurses or nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position beyond the entry level registered nurse, but it does not appear to be analogous to an administrative nursing position. A recent CIS policy memo provides the following commentary on administrative nursing positions: [REDACTED] are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See

[REDACTED] The *Handbook* reference is to the classification of medical and health services managers. The *Handbook* states:

The term “medical and health services manager” encompasses all individuals who plan, direct, coordinate and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The *Handbook* also reports that medical and health services managers must be familiar with management principles and practices. A master’s degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor’s degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations.

The *Handbook* describes the fields in which bachelor’s degrees are the standard credential for most generalist positions. The petitioner’s position announcement and the certification from its president stated that a candidate must possess a bachelor’s degree or its equivalent; however, neither document indicated that the degree must be in a specific specialty. This strongly suggests that the petitioner’s duties do not rise to the same level as a medical and health services manager position given that a candidate is not required to have the knowledge associated with the degrees that are considered the standard credential for most generalist positions.

Most important, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. In light of the petitioner’s silence about the specific baccalaureate degree that is required for the position, the AAO finds that the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations – the record contains two letters and Internet postings. The letter from [REDACTED] that a bachelor’s degree or its equivalent is required for its healthcare services supervisor position. This letter fails to state the duties of its position; thus, the AAO cannot determine whether it is parallel to the proffered position. The second letter from New Horizons does not indicate that the bachelor’s degree must be in a specific specialty; it therefore carries little weight. The postings are not probative in establishing the second criterion. One posting from [REDACTED] (Tenet Facility) requires a RN license; their second posting does not indicate that the bachelor’s degree must be in a specific specialty. The Kaiser posting requires a bachelor’s degree in business,

1 Memorandum from [REDACTED] NS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

education, or equivalent experience. None of the postings represent organizations similar to the petitioning entity, and none of their requirements resemble those of the proffered position.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner fails to indicate that a bachelor's degree in a specific specialty is required for the position. As discussed, the duties of the position would not require the knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. For these reasons, the petitioner fails to establish this criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.